

APPEAL NO. 032658
FILED DECEMBER 1, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was originally held on May 19, 2003. The appellant (attorney) did not appear at the CCH. The hearing was conducted in his absence and the hearing officer determined that the attorney is entitled to \$0.00 in total fees. The attorney appealed, asserting that he never received any notice of the scheduling of an attorney's fee CCH. The Appeals Panel in Texas Workers' Compensation Commission Appeal No. 031627, decided August 11, 2003, remanded the case back to the hearing officer for the following matters:

1. Schedule another CCH.
2. Order the attorney to attend.
3. Afford the attorney the opportunity to show good cause for not attending the CCH held on May 19, 2003.
4. Take evidence on the merits of the attorney's fee issue.
5. Further consideration of the disputed issue of attorney's fees on the basis of the evidence.
6. Obtain compliance with House Bill 2600.

We further noted that the address to which the original notice of hearing was mailed had a numerical error in the address in comparison to the address listed on the attorney's letterhead.

In evidence, as Hearing Officer's Exhibit No. 1, is the reset notice of a September 4, 2003, CCH date sent to the parties, including the attorney's correct address, and containing a copy of Appeal No. 031627, *supra*. A CCH on remand was convened on September 4, 2003, with (hearing officer) again presiding. Respondent 1 (claimant), an ombudsman and translator were present and the attorney (and respondent 2 (carrier)) were again not present. The hearing officer incorporated the evidence from the May 19, 2003, CCH and adopted the Statement of the Evidence from that hearing. The hearing officer determined that the attorney is entitled to \$0.00 in total fees as being reasonable and necessary.

The attorney appeals, again asserting that had not received notice of the hearing on remand, that the hearing officer did not call him on the date of the hearing on remand, and that the hearing officer again failed to send the attorney a 10-day "show cause letter" for failing to attend the hearing on remand. The file does not contain a response from either the claimant or the carrier.

DECISION

Affirmed.

Our review of the reset notice, with our decision in Appeal No. 031627, *supra*, attached (which the attorney clearly received), indicates that it was sent to the attorney's correct address of record. The purpose of the 10-day "show cause letter" is to give a party a second opportunity to appear and present evidence. The remand and direction to hold a CCH on remand constituted the attorney's second opportunity to appear and present evidence. As we noted in Appeal No. 031627, *supra*, should a party fail to appear for the next (second) hearing, after adequate notice has been given, the hearing officer could then issue a decision. There is no requirement for the hearing officer to call a party who is not present at the CCH. We would further note that pursuant to Section 410.203(c), we may not remand this case again.

We find the hearing officer's decision is supported by sufficient evidence and accordingly the hearing officer's decision and order are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Edward Vilano
Appeals Judge